Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Structure and Practices of the Video Relay	)	CG Docket No. 10-51
Service Program; Telecommunications Relay	)	
Services and Speech-to-Speech Services for	)	
Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
To: The Commission	)	

REPLY COMMENTS TO FNPRM ON STRUCTURE AND PRACTICES OF THE VIDEO RELAY SERVICES PROGRAM

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REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

Purple Communications, Inc. ("Purple") is pleased to provide reply comments to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking on Structure and Practices of the VRS Program ("FNPRM")[1] and its efforts to ensure that Video Relay Service ("VRS") is "effective, efficient, and sustainable for the future."[2]

I. EXECUTIVE SUMMARY

Review of the other comments filed in this proceeding only bolster Purple's positions and recommendations with respect to centralizing registration and verification with a new VRS User Database ("VRSURD"), increasing speed of answer thresholds, allowing consumers to select an interpreter that matches the skills needed for specialized calls, allowing the issuance of ten-digit telephone numbers to hearing parties that can use sign language, requiring provider compliance plans, supporting Lifeline as a mechanism for broadband subsidies, and not offering any form of compensation to providers who bring "new to category" users into the market. Rather than repeat Purple's positions with respect to each of these issues, these reply comments instead address certain technology standards and rate methodology, which if followed, Purple believes could save the TRS Fund more than $50 million annually.

[1] *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Further Notice of Proposed Rulemaking, 2011 FCC LEXIS 5101 (Dec. 15, 2011) (*FNPRM*).

[2] *Id.* at ¶ 1.

II. TECHNOLOGY STANDARDS SHOULD FACILITATE CONSUMER CHOICE

A. The Commission Should Allow Off-the-Shelf Equipment and Customized VRS Customer Premise Equipment ("CPE")

While Purple believes that "[a]n open, standards-based approach to video relay will promote use of off-the-shelf equipment and expand choices available to consumers, while creating a platform of innovation for providers,"[3] Purple disagrees with ZVRS' suggestion "requiring all VRS CPE equipment to be 'off-the-shelf' and/or mainstream products."[4] VRS providers should have the latitude and flexibility either to adapt off-the-shelf video equipment and software or to develop and offer customized VRS CPE, as long as the proposed technological standards and interoperability and portability requirements are met. Purple reiterates its prior observation that "current commercially available hardware and software have varying degrees of interoperability and portability," as outlined in the requirements matrix shown in Figure A of Purple's March 8, 2012 filing.[5] Purple acknowledges and agrees with Sorenson's comment on this aspect: "As long as providers' equipment is standards-compliant, the Commission should not prohibit providers from improving the consumer experience by competing against each other to develop the most useful and versatile equipment possible."[6]

[3] Comments of Purple, CG Docket No. 10-51, at 13 (Mar. 8, 2012).

[4] Comments of CSDVRS, CG Docket No. 10-51, at 43 (Mar. 9, 2012).

[5] Purple Comments at 15.

[6] Comments of Sorenson, CG Docket No. 10-51, at 76 (Mar. 9, 2012).

B. The Commission Should Prioritize Device Portability and Prohibit Restrictive Router Settings

As indicated in Figure A of Purple's March 8, 2012 filing, device portability is only implicated in those technology arrangements consisting of (i) provider-offered hardware and (ii) proprietary software, while in other technology configurations, the portability of a device may not be within a provider's control.[7] Interoperability and portability rules are essential to the development of a more efficient industry structure and to reducing the adverse effects of "lock-in." For this reason, Purple disagrees with Sorenson's comments suggesting that the Commission focus on VRS provider-offered hardware and proprietary software at the expense of attention to portability standards.[8] The prolific dominance of Sorenson's videophone equipment and associated "lock-in" effect has facilitated Sorenson's near-monopoly of the industry. Only attention to portability standards will facilitate the reduction of "lock-in" and its ill effects.

That said, Purple acknowledges that when a customer ports his or her device to another VRS provider, the original issuing provider of that device should be entitled to fair compensation of the costs of developing and deploying the device.

Purple is informed that certain provider-issued routers can be installed in a "locked-down" fashion. This setting prevents additional and/or alternative VRS equipment from working successfully alongside the VRS equipment from the original installation. For this reason, Purple recommends that new rulemaking should ensure that the installation of provider-issued routers and other relevant equipment does not interfere with the consumer's choice of VRS access technologies.

[7] Purple Comments at 15.

[8] Sorenson Comments at 8, 63.

C. Timely Transition to Session Initiation Protocol ("SIP") is Feasible

With regard to the SIP transition from H.323 to SIP, and despite comments from other VRS providers to the contrary,[9] Purple continues to believe that its proposed transition timetable of 12 months, as shown in Exhibit 1 of Purple's March 8, 2012 filing, allows a reasonable yet efficient amount of time for development and implementation of technical standards for the VRSURD, device interoperability, and portability. As Sorenson notes, "all VRS providers today already support H.323, and where necessary, have H.323 to SIP gateways currently in place." H.323 to SIP gateways are readily available and do not present significant technical challenges. In fact, the recent SIP compatibility event in January 2012 hosted by Neustar proved helpful in identifying technical issues and fostering relationships among VRS providers for technical issue resolution. To the extent that H.323 to SIP gateways are currently in place, they can be retired as soon as the 12 months have elapsed, thereby lowering technical costs and simplifying the technical infrastructure required.

III. NEW RATES SHOULD BE LOWER AND PREDICTABLE

A. Purple Recommends a Share Cap System

Purple acknowledges the Commission's desire to end subsidies for sub-scale providers and have the industry compensated in a uniform manner. For numerous reasons pointed out by virtually all comments (with the exception of Sorenson),[10] Purple recommends that the

[9] See, e.g., Sorenson Comments at 74 ("18 to 36 months"); CSDVRS Comments at 44 ("two years").

[10] *See generally* Comments of ASL Services Holding, Inc. (Gracias); Cerebal Palsy and Deaf Organization (CPADO); Convo Communications, Inc.; CSDVRS; Hancock Jahn, Lee & Puckett, LLC (CAAG); Healinc Telecom, LLC; Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA); and Video Relay Services Consumer Association (VRSCA), CG Docket No. 10-51 (Mar. 9, 2012). Numerous individuals filed comments opposing the per-user approach as well.

Commission reject the proposed per-user compensation methodology.[11] Purple also recommends that the Commission reject any form of "hybrid" compensation arrangement that would separate a broadly-defined set of duties of an "access provider"[12] from those of another provider who simply handles "interpreting" services. Not only does this structural separation between two different providers create an economic disadvantage for providers other than Sorenson,[13] it will trap consumers between disputes among providers related to service experience and logging of complaints. Administratively, a structural separation is overly complex and unnecessary given other available and straightforward approaches that are consumer friendly, that advance the efficiency goals of the Telecommunications Relay Services Fund ("TRS Fund"), and that are more easily administered.

Instead, Purple supports implementation of its share cap proposal with providers bidding for certain portions of market share. Purple's proposal is sensible and can be implemented without compromising the end point choices of consumers or the quality of the services delivered. Under a price cap scenario, if providers who were awarded traffic failed to meet

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[11] Consumers register "adamant" opposition to the per-user compensation methodology based on the belief that it would "decimate the level of functional equivalence achieved with the current system" and that the "per-minute compensation methodology with the recent rule changes to combat fraud and abuse remains the best rate compensation methodology at the present time to support the current level of functional equivalence for deaf and hard of hearing consumers and speech impaired consumers." *See* Comments of Deaf and Hard of Hearing Consumer Advocacy Network, et al., CG Dockets No. 10-51, at iv (Mar. 9, 2012).

[12] CSDVRS Comments at 18 (proposing "VRS Access Providers" handle the cost of the customer's videophone, registration, verification, e911 confirmation, issuance of 10-digit number, installation, training, support, maintenance, network and platform operations, interoperability, engineering (including ensuring interoperability), failed unit repair and replacement, testing, routing and handling of emergency calls, and undefined "other" related services).

[13] Notice of Ex Parte Meeting, CG Docket No. 10-51 (Feb. 8, 2012), *available at* http://fjallfoss.fcc.gov/ecfs/document/view?id=7021859001 (summarizing February 6, 2012, ex parte meeting between FCC and Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc., Andrew S. Phillips, Policy Attorney, National Association of the Deaf, Cheryl Heppner, National Advocacy Director, Association of Late Deafened Adults, Inc., where it was indicated that "based on conversations with members in the community, the Consumer Representatives believe that if VRS users must choose one VRS provider, the majority of users would choose the dominant provider.")

frequently measured performance standards, they would be subject to award adjustments and loss of market share. This is not a novel process. Experts in the TRS market have organized and implemented contract bidding processes on behalf of states. With the appropriate involvement of consumers, the Commission could implement such a process to maximize choice and protect innovation and competition.

B. Industry Norms Support a Reduced and Predictable Rate Structure

Today's VRS industry is comprised not of large telecommunications or broadband service carriers with diversified revenue streams, but small privately-owned, investor-backed entities that deliver relay services exclusively. The services offered by these providers are essential to the functional equivalence mandate of the Americans with Disabilities Act (the "ADA"). The dedication and innovation of these companies have expanded technological communications access for the deaf and hard of hearing far beyond the TTY.

No single provider has visibility into the cost structure of its competitors. Instead, each provider can only speak for its own economic situation. In its January 2011 presentation to the Commission,[14] Purple provided a detailed analysis of its current costs and its projected costs at certain theoretical volume levels. Purple analyzed all aspects of its VRS business, including costs for interpreting, network operations, and allocations for outreach, research and development and general and administrative expenses directly related to VRS. In an effort to be transparent with the Commission and to illustrate the economic benefits of growth, Purple made projections for each of these costs on a per minute basis under different assumptions of call volume. Purple's expressed its estimates in a "cost per minute" measurement.

[14] *See* Purple Presentation on VRS Market Structure, at 7 (Jan. 25-26, 2011), *available at* http://apps.fcc.gov/ecfs/document/view?id=7021027707.

Purple believes that its cost projections are reasonable, and Purple encourages the Commission to rely upon them as model projections of a theoretical efficient operator with reasonable operating costs, reasonable costs of capital, and a relay-only business model.[15] Purple's projections challenge Sorenson's rhetoric related to the superiority of its operating ecosystem and the skills of its managers[16] and show that other providers can be equally, if not more, efficient with volume. Sorenson claims that all providers will either "go out of business or go through bankruptcy" if the rate is less than Sorenson's suggested rate floor of $5.14 per minute.[17]

Sorenson's predictions about industry failure if the rate is less than $5.14 are unfounded as will be illustrated further in these comments. Additionally, even if a rate change results in some provider bankruptcy, such an event is equivalent neither to provider liquidation nor to industry failure. The overdue reduction of Sorenson's near-monopoly and appropriate and necessary reform to the rate structure may cause some handover in business among providers. Indeed, some VRS provider reorganization may be a natural and healthy consequence of the Commission's establishment of appropriate rates.

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[15] In the market for VRS, the primary providers (Sorenson, Purple, CSDVRS, Snap, and Convo) have wholly devoted their investments to the provision of relay services.

[16] *See* Katz Declaration to Sorenson Comments at 33-35 (stating that "[t]he Commission should not confuse the effects of superior management and learning with economies of scale" and further stating that "Sorenson believes that many of its rivals obtain substantially lower VRS efficiency," and "at least in the case of ZVRS and Purple, any differences in VRS efficiency are not likely to be a result of queuing efficiencies, but rather of management decisions made by each firm."). Sorenson, in its claims of operating excellence, conveniently omits the historical context of its mandatory minimum minute pumping imposed on consumers and the impairment of consumer choice through utilization of a closed network, both of which were later ruled as improper by the Commission but only after usage patterns were established.

[17] Sorenson Comments at 36 (stating that "if the Commission were to reduce the VRS compensation rate significantly below $5.14, or change to a per-user model with a rate significantly below the equivalent of $5.14 per minute, every existing VRS provider would either go out of business or go through bankruptcy, even if it could terminate a significant number of employees without destroying its labor-intensive business.")

Ultimately, the most effective way to reduce the cost of the TRS program is to impart predictability into the rates and thereby enable providers to make well-informed assumptions in scaling and adapting their operations. Predictable rates and contract periods will create a stable industry in which providers can innovate and optimize efficiencies.

C. Purple Recommends a Predictable Multi-Year Transitional Rate Structure

Purple notes that providers other than Sorenson recommended some form of tiered compensation arrangement on a per minute basis.[18] Purple reiterates its recommendation that the Commission adopt a predictable four year transition to a unitary per minute rate using price cap methodology with annual adjustments for efficiency factors.

Purple has previously submitted a detailed proposal outlining how expanding the thresholds of the tiers and lowering rates could result in cost savings to the program while enabling smaller providers to "climb the scale curve"[19] following the implementation of industry-wide technology standards. Under Purple's modified tier proposal, providers would have the opportunity to gain additional market share during a period of limited duration with a known end date or trigger point for the conversion to the unitary model. Purple suggests that such a trigger point is best measured when the market's largest provider holds no more than 50% of the total volume for the industry. This quantitative measurement of competition, supported by the Herfindahl Hirschman Index ("HHI")[20], would assure the Commission that its risk of reliance on any single VRS provider are diminished and would reflect market conditions that are

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[18] *See generally* Comments of CAAG, Convo, Gracias, and CSDVRS.

[19] *See* Purple, *FCC Presentation: VRS Program & Policy Recommendations* (Feb. 11, 2011), *available at* http://fjallfoss.fcc.gov/ecfs/document/view?id=7021029525. Purple's modified tier proposal called for tier 1 being up to 1 million minutes, tier 2 from 1 million to 2 million minutes, and tier three being 2 million minutes or more. *Id.* at 11.

[20] Dept. of Justice, *The Herfindahl-Hirschman Index*, http://www.justice.gov/atr/public/testimony/hhi.htm (last visited Mar. 7, 2012). HHI is a method by which analysts and the United States Department of Justice and Federal Trade Commission can evaluate market concentration.

truly more competitive. This proposal would give both the Commission and the industry certainty regarding the termination of sub-scale provider subsidies. Such clarity and stability would foster organic provider growth, strategic business combinations, and appropriate adjustments to business operations that allow for the reduction of rates.

Purple's proposed rates for VRS are shown below as Table 1. Purple recommends the elimination of the current "Tier 1" rate and an expansion of minutes covered under a new Tier 1. This proposal also recommends the preservation of the "waterfall" feature of the rates in order to remain consistent with the current VRS reimbursement model and allow for smoother transition while still yielding reasonable savings.

Table 1

	Proposed Minute Tiers and Rates		
	Min	Max	Rate
Tier 1	-	1,000,000	$ 5.92
Tier 2	1,000,001	2,000,000	$ 4.94
Tier 3	2,000,001	unltd	$ 4.27

Using the Commission's information as presented in the FNPRM,[21] Purple compares its proposal to the current VRS reimbursement program and to the Commission's theoretical unitary rate program. The results, illustrated in Table 2 below, reflect that Purple's proposal will save the TRS Fund over $50 million annually while still protecting smaller providers and fostering a competitive marketplace.

[21] *See FNPRM* at *46-47 (Table 1).

Table 2[22]

FNPRM Example Using Current Model

	Minutes		Rate / Min		Total Paid by Tier
Tier 1	315,157	$	6.24	$	1,966,580
Tier 2	1,491,340	$	6.23	$	9,291,048
Tier 3	7,047,330	$	5.07	$	35,729,963
	8,853,827			$	46,987,591
Blended Rate Per Minute				$	5.31

FNPRM Example Using FCC Theoretical Model

	Minutes		Rate / Min		Total Paid by Tier
Single Rate	8,853,827	$	5.07	$	44,888,903
Blended Rate Per Minute				$	5.07

FNPRM Example Using Purple Proposal

	Minutes		Rate / Min		Total Paid by Tier
Tier 1	2,505,151	$	5.92	$	14,826,734
Tier 2	1,000,000	$	4.94	$	4,940,000
Tier 3	5,348,676	$	4.27	$	22,838,848
	8,853,827			$	42,605,582
Blended Rate Per Minute				$	4.81

Analysis

Savings compared to Current Model		-9%
Savings compared to FCC Model		-5%
Monthly Savings	$	4,382,009
Annualized Savings using Purple Proposal	$	52,584,107

Purple believes if it were operating at a minute volume greater than 2 million per month, it could operate profitably under this proposed waterfall rate plan even with the tier 3 rate being

[22] Assumes Sorenson is 83% of minutes and that no provider other than Sorenson handled more than 1 million minutes for the period.

set at $4.27 per minute. This further illustrates that Sorenson's claims regarding the financial collapse of the industry at rates less than $5.14 are unfounded and dubious.

D. Purple Recommends Three Years of a Predictable Unitary Rate

At the Commencement of the unitary rate period after open standards are deployed and the market is more openly competitive, Purple recommends that the Commission adopt the lowest rate paid under the tiered plan as the starting rate for the three year unitary rate period. This new starting rate would be paid to all providers and adjusted annually for efficiency. Again, the stability that predictable rates would bring to the market would further innovation and efficiency.

E. Price Cap Regulation Would Promote Further Stability

VRS rates should be regulated by price cap methodology. As previously stated in Purple's August 18, 2010 Notice of Inquiry Comments,[23] the stability provided by the price cap would optimize the incentives for VRS providers to lower costs and engage in long-term planning and investment in their VRS businesses. Under a price cap system, rates would remain steady, subject to standard adjustment factors based on well-established and objective indexes.

A price cap structure motivates providers to operate efficiently because providers obtain the benefits of those cost reductions until rates are reset.[24] When providers succeed in decreasing costs and increasing efficiency, the resulting surplus of funds can be invested in innovations and improved services. For these reasons, cost reductions under a price cap structure will reduce rates because the reduced costs are factored in to the new rates when the cap expires.

Maintaining a competitive environment is especially critical in industries like VRS,

[23] *See* Comments on Notice of Inquiry by Purple, CG Docket No. 10-51, at 10 (Aug. 18, 2010).

[24] *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6787 (Oct.4, 1990).

where consumers and the Commission benefit from competition among providers in non-price categories (e.g., service, quality and innovation). Price cap structures can be tiered to account for cost asymmetries among providers due to scale economies and can optimize the opportunities for smaller firms to compete until unitary rates are in effect.

Price caps also reduce regulatory burdens on the Commission. An appropriately-designed price cap framework with a tiered rate structure can ultimately achieve lower rates, increase efficiency, promote a level playing field among providers, and reduce the burden on the Commission.

IV. CONCLUSION

The Commission first opened Docket Number 10-51 for VRS reform on February 25, 2010.[25] After two years of fact gathering, numerous filings, and significant effort to meet with and consider the views of all stakeholders, the Commission likely has everything it needs to make informed decisions regarding the future of the VRS program. The Commission should seek to bring stability to the VRS market by creating a predictable rate structure that fosters innovation and efficiency and encourages fair market competition.

Purple encourages the Commission to promptly issue an Order in this proceeding and adopt an approach similar to the one outlined by Purple and attached as Exhibit 1.

[25] *See Structures and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Declaratory Ruling, 25 FCC Rcd 1868 (Feb. 25, 2010).

EXHIBIT 1

VRS Reform Implementation Schedule

Phases	Activities Undertaken	Reimbursement Model	Duration
Phase 1 - Implementation	Technical standards developed and implemented for VRSURD, device interoperability, portability, and implementation.	Continuation of current interim rates and tiers.	Months 1-12 from the approval date of the Order.
Phase 2 – Growth	Customers are contestable based on implementation of portability standards. Users registering (or re-registering) with the new database system.	Modified tiers and rates.	Months 13-48 from the approval date of the Order, provided technical standards and VRSURD are prepared for deployment. The implementation of Phase 2 is directly tied to the contestability of the installed base.
Phase 3 – Scale	Marks end of sub-scale provider subsidies.	Unitary rate for 3-years with annual efficiency factor adjustments.	Commencing the 49th month from the approval date of the Order (or sooner if market share triggers are achieved).